



## King County

### Department of Development and Environmental Services

900 Oakesdale Avenue Southwest  
Renton, WA 98057-5212

**206-296-6600** TTY 206-296-7217

www.metrokc.gov

## REGULATORY REVIEW COMMITTEE

- MINUTES -

**MEETING DATE: August 13, 2009**

**TO:** Building Services Division Staff  
Jim Chan, Manager  
Chris Ricketts  
Jarrod Lewis  
Deidre Andrus

Land Use Services Division Staff  
Randy Sandin, Manager  
Lisa Dinsmore  
Steve Bottheim  
Doug Dobkins  
Pesha Klein  
Molly Johnson

Fire Marshal Division Staff  
John Klopfenstein, Fire Marshal

Stephanie Warden, Director  
Joe Miles, Deputy Director  
Harry Reinert, Special Projects Manager and RRC Chair  
Devon Shannon, Prosecuting Attorney's Office

**FM:** Harry Reinert, Chair

Present: Devon Shannon, Steve Bottheim, Jarrod Lewis, Bill Kerschke, Don Gauthier, Deidre Andrus, Jerri Breazeal, Lisa Dinsmore, Pesha Klein, Randy Sandin, and Harry Reinert

### **1. Under K.C.C. 21A.24.325, is a riding arena on a property that has a farm management plan eligible for low impact wetland buffers?**

#### Background

A therapeutic riding arena for disabled children is proposed on a lot that has existing agriculture and is zoned RA-10. The applicant has applied for a commercial building permit to construct proposed arenas, offices, expanded parking areas, equestrian riding tracks, and stormwater retention/retention facilities. There are several wetlands on the site. The applicant has requested the application of low impact wetland buffers for all on-site wetlands

Discussion

K.C.C. 21A.24.325 establishes minimum buffer widths for development proposals within King County. Outside the urban growth area, buffer widths are based in part on the intensity of the development adjacent to the wetland. Development can fall into one of three different levels of intensity:

- a. high impact includes:
  - (1) sites zoned commercial or industrial;
  - (2) commercial or industrial use on a site regardless of the zoning designation;
  - (3) nonresidential use on a site zoned for residential use;
  - (4) active recreation use on a site regardless of zoning;
- b. moderate impact includes:
  - (1) residential uses on sites zoned rural residential;
  - (2) residential use on a site zoned agriculture or forestry; or
  - (3) agricultural uses without an approved farm management plan; and
- c. low impact includes:
  - (1) forestry use on a site regardless of zoning designation;
  - (2) passive recreation uses, such as trails, nature viewing areas, fishing and camping areas, and other similar uses that do not require permanent structures, on a site regardless of zoning; or
  - (3) agricultural uses carried out in accordance with an approved farm management plan.

K.C.C. 21A.24.325B.2. There are several factors to consider in determining what level of impact the riding arena in this case would fall into.

The starting point for discussion is whether the use is an agricultural use. The King County zoning code does not include a definition of agriculture. Under K.C.C. Chapter 21A.08, stables are included as a permitted use on the business/commercial table in K.C.C. 21A.08.050 rather than as a resource use under K.C.C. 21A.08.090. The DDES fee ordinance defines an agricultural building for purposes of fees charged for review of land use and building permits as a structure used for stabling or training equines or for equine riding lessons or training clinics. K.C.C. 27.02.190. This latter definition is consistent with the interpretation of the King County Conservation District, which considers riding arenas, barns, and paddocks as agriculture buildings.

Therefore, it seems most reasonable to treat riding arenas as an agricultural use.

For an agricultural use, if the use is carried out in accordance with an approved farm management plan, the use is considered to be low impact for purposes of determining wetland buffers. K.C.C. 21A.24.051 establishes standards for approval of farm management plans by King County. The plan must be based on the following goals, which are set forth in priority order:

1. To maintain the productive agricultural land base and economic viability of agriculture on the site;
2. To maintain, restore or enhance critical areas to the maximum extent practical in accordance with the site specific goals of the landowner;
3. To the maximum extent practical in accordance with the site specific goals of the landowner, maintain and enhance natural hydrologic systems on the site;
4. To use federal, state and local best management practices and best available science for farm management to achieve the goals of the farm management plan; and
5. To monitor the effectiveness of best management practices and implement additional practices through adaptive management to achieve the goals of the farm management plan.

K.C.C. 21A.24.051D. Farm management plans are generally developed by a property owner in consultation with the King Conservation District (KCD), but must be approved by King County.

K.C.C. 21A.24.051F. Development of farm management plans is governed by Department of Natural Resources and Parks (DNRP) Public Rule PUT 8-21, available at <http://www.kingcounty.gov/operations/policies/rules/utilities/put821pr.aspx>.

The mere existence of a farm management plan is not sufficient to have an agricultural use declared to be low impact for purposes of determining wetland buffers. K.C.C.

21A.24.325B.2.(c).3. requires that the use be carried out in consistent with a farm management plan. If the farm management plan does not address a particular use or the impacts from that use, then the use would not meet the criteria for a low impact use. DDES works closely with DNRP and the KCD in developing farm management plans that will require modification of critical areas and critical area buffers. It is DDES's experience that farm management plans do not generally address stormwater issues. The Best Management Practices the KCD recommends are directed towards what might be described as more traditional agricultural practices, such as grazing livestock and growing and harvesting agricultural products. The KCD does not have recommended best management practices for stormwater management associated with riding arenas and other agricultural structures. Therefore, the fact that an applicant has a farm management plan for a property on which a riding arena is located, would not generally qualify the riding arena for consideration as a low impact use. If the department determines that these issues have been addressed by the farm plan and the plan has been approved by King County, then the use would qualify as a low impact use.

A related issue is whether, with a farm plan, all development on an entire site qualifies for treatment as a low impact use. K.C.C. 21A.24.325 has provisions that appear to be somewhat in conflict. K.C.C. 21A.24.325B speaks of the "intensity of the impact of the adjacent land use." However, several subsections under .325B refer to the site's zoning as a major factor, if not the determining factor, in determining what is the impact of a development proposal. In the case of agricultural uses, though, the site's zoning is not relevant. The issue is whether the use is carried out consistent with an approved farm management plan. Therefore, in the present circumstances, each use should be evaluated separately. As a result, it is possible that different agricultural uses

on the same property might be assigned different levels of intensity based on whether they are addressed in the farm management plan and whether they are carried out consistent with that plan.

#### Conclusion

A riding arena is considered to be an agricultural use for purposes of determining the appropriate wetland buffers. If an RA zoned site has a farm management plan that has been approved by King County and that plan includes best management practices for the riding arena, the riding arena would be considered to be a low impact land use under K.C.C. 21A.24.325. If the riding arena is not covered by or carried out consistent with an approved farm management plan, the riding arena would be considered to be a moderate impact land use under K.C.C. 21A.24.325. Associated facilities associated with the riding arena, such as stormwater retention/detention facilities, are an integral part of the use and would be treated in the same manner as the structure or use.

- 2. Is a stockpile of wood waste that is processed as part of a materials processing facility on an A-35 zoned property located in the 100 year zero rise floodway subject to the requirements of K.C.C. 21A.24.250B concerning activities that will increase the base flood elevation? (Code Interpretation Request L09CI003)**

#### Background.

Rainier Wood Recyclers operates a materials processing facility in the A-35 zone. Most of the property on which the activity takes place is located within the zero rise floodway of the Snoqualmie River. The facility was originally established in 1998. Rainier brings in raw and processed wood waste throughout the year. Incoming material is stored in piles on the property until it can be processed. After processing, it is again stored in piles on site until it can be sold and transported to its customers. The location and size of the stockpiles changes throughout the year and from year to year. They are generally at their greatest towards the end of the construction season. Rainier's operations are subject to a Code Enforcement Complaint. Case E03G0006? There are several issues in dispute between Rainier and DDES concerning the activities on the property.

In order to resolve some of these issues, Rainier has requested a code interpretation concerning the application of K.C.C. 21A.24.250B, which generally prohibits development proposals that will increase the base flood elevation.

The Regulatory Review Committee held an initial discussion of the issue. The following summarizes the issues considered by the Committee. The Committee will revisit the issue at its next meeting.

#### Discussion.

K.C.C. 21A.06.505 defines the zero-rise floodway as follows:

Floodway zero-rise: the channel of a stream and that portion of the adjoining floodplain that is necessary to contain and discharge the base flood flow without any measurable increase in base flood elevation.

A. For the purpose of this definition, "measurable increase in base flood elevation" means a calculated upward rise in the base flood elevation, equal to or greater than 0.01 foot, resulting from a comparison of existing conditions and changed conditions directly attributable to alterations of the topography or any other flow obstructions in the floodplain. "Zero-rise floodway" is broader than that of the FEMA floodway but always includes the FEMA floodway.

B. "Zero-rise floodway" includes the entire floodplain unless a critical areas report demonstrates otherwise.

Much of the Rainier Recycling property is located within the zero-rise floodway.

K.C.C. 21A.24.250 establishes the development standards for development proposals and alterations in the zero-rise floodway. These development standards include a general prohibition on increasing the base flood elevation.

B. A development proposal shall not increase the base flood elevation except as follow:

1. Revisions to the Flood Insurance Rate Map are approved by FEMA, in accordance with 44 CFR 70, to incorporate the increase in the base flood elevation; and

2. appropriate legal documents are prepared and recorded in which all property owners affected by the increased flood elevations consent to the impacts on their property;

K.C.C. 21A.24.250B. The development standards also limit the storage of some kinds of materials during the flood season:

In its request for code interpretation, Rainier Recycling suggests that the prohibitions in K.C.C. 21A.24.250 are only intended to govern permanent loss of flood storage and that the stockpiles, which vary in size and location throughout the year are not permanent. Rainier Recycling suggests that support for this analysis can be found in K.C.C. 21A.24.250E, which provides that

During the flood season from September 30 to May 1 the following are not allowed to be located in the zero-rise floodway;

1. All temporary seasonal shelters, such as tents and recreational vehicles; and

2. Staging or stockpiling of equipment, materials or substances that the director determines may be hazardous to the public health, safety or welfare;

While it is true that K.C.C. 21A.24.250E.1 refers to temporary shelters, there is nothing in the rest of that section that suggests that its provisions are intended to apply only to permanent alterations. Title 21A does not include a definition of either "permanent" or "temporary." In the

context of regulations governing flood hazards, the distinction is irrelevant. If an alteration to the floodway causes an increase in the base flood elevation, the harm that causes will be the same whether the alteration is permanent or temporary.

The limitations in K.C.C. 21A.24.250 apply to development proposals and alterations. A development proposal is "any [activity] requiring a permit or other approval from King County relative to the use or development of land." K.C.C. 21A.06.310. These activities may be either temporary or permanent in nature. For example, certain temporary activities require a temporary use permit. See K.C.C. 21A.32.100 - .140. As such, they are considered to be development proposals, even though temporary. An alteration, which is defined as "any human activity that results or is likely to result in an impact upon the existing condition of a critical area or its buffer," may also be a temporary activity. K.C.C. 21A.06.056. For example, placing fill in a critical area buffer, is an alteration, even if it is only intended to be temporary.

The purpose behind K.C.C. Chapter 21A.24 also supports the conclusion that locating "temporary" stockpiles in the floodway should be subject to the flood hazard reduction requirements of K.C.C. 21A.24. K.C.C. 21A.24.010 establishes the purposes of the critical area regulations:

The purpose of this chapter is to implement the goals and policies of the Growth Management Act, chapter 3670A RCW, Washington state Environmental Policy Act, chapter 43.21C RCW, and the King County Comprehensive Plan, which call for protection of the natural environment and the public health and safety by:

A. Establishing development and alteration standards to protect functions and values of critical areas;

**B. Protecting members of the general public and public resources and facilities from injury, loss of life, property damage or financial loss due to flooding, erosion, avalanche, landslides, seismic and volcanic events, soil subsidence or steep slope failures;**

C. Protecting unique, fragile and valuable elements of the environment including, but not limited to, fish and wildlife and their habitats, and maintaining and promoting countywide native biodiversity;

D. Requiring mitigation of unavoidable impacts to critical areas, by regulating alterations in or near critical areas;

E. Preventing cumulative adverse environmental impacts on water availability, water quality, ground water, wetlands and aquatic areas;

F. Measuring the quantity and quality of wetland and aquatic area resources and preventing overall net loss of wetland and aquatic area functions;

G. Protecting the public trust as to navigable waters, aquatic resources, and fish and wildlife and their habitat;

**H. Meeting the requirements of the National Flood Insurance Program and maintaining King County as an eligible community for federal flood insurance benefits;**

I. Alerting members of the public including, but not limited to, appraisers, owners, potential buyers or lessees to the development limitations of critical areas; and

J. Providing county officials with sufficient information to protect critical areas. (*emphasis added*)

In light of these considerations, stockpiles of raw and processed wood waste associated with a materials processing facility and that are located in the zero-rise floodway are subject to the provisions of K.C.C. 21A.24.250.

This does not mean that the stockpiles are prohibited from locating in the zero-rise floodway. K.C.C. 21A.24.250B prohibits an activity that will raise the base flood elevation. If Rainier Recycling can demonstrate that the stockpiles will not result in an increase in the base flood elevation, they would not be prohibited under this provision.

K.C.C. 21A.24.250E.2, the other relevant provision of this section, prohibits "[s]taging or stockpiling of equipment, materials or substances that the director determines may be hazardous to the public health, safety or welfare" in the zero-rise floodway during the flood season from September 30 to May 1. Thus, if Rainier Recycling is able to demonstrate that its stockpiles are not hazardous to the public health and safety so that the director is able to make the required finding, the stockpiles would not violate this provision.

#### Conclusion.

The Regulatory Review Committee considered a code interpretation request concerning stockpiling of raw and processed wood waste in the flood zone. The Committee held an initial discussion of the issues.

The preliminary conclusion is that stockpiles that are stored in the zero-rise floodway for processing in a materials processing facility are subject to the provisions of K.C.C. 21A.24.250. The fact that the stockpiles change in size and location during the course of the year does not make them temporary or exempt them from the regulations. K.C.C. 21A.24.250B generally prohibits activities that will increase the base flood elevation. If an applicant can demonstrate that stockpiles of raw and processed wood waste in the zero-rise floodway will not have this effect, they would not be prohibited. Under K.C.C. 21A.24.250E.2, if an applicant can demonstrate to the director that locating the stockpiles in the zero-rise floodway during the flood season will not be hazardous to public health or safety, the director may allow them to remain.

### **3. Is storage of ammunition and explosives allowed on an RA zoned property? (Code Interpretation Request L09CI002)**

#### Background

General Dynamics' Ordnance and Tactical Systems Division tests munitions that it supplies to the federal government. The munitions are tested at a facility in Bothell. Until recently the munitions were stored Redmond. General Dynamics has moved storage of the materials to a site in unincorporated King County zoned RA-10. The materials are stored in three magazines, the

largest of which is 6 feet by 8 feet by 7 feet. There is also a temporary storage shed. The property is accessed no more than twice a day, once in the morning and once in the afternoon to retrieve and return materials to the magazines.

Mr. William Walsh, on behalf of his client General Dynamics, has requested an interpretation of whether the described activity is a permitted use under K.C.C. 21A.08.

#### Discussion

K.C.C. 21A.08 does not include a specific category that covers the use as described by Mr. Walsh.

One similar activity is Warehousing and Wholesale Trade, which is defined as " establishments involved in the storage and/or sale of bulk goods for resale or assembly, excluding establishments offering the sale of bulk goods to the general public which is classified as a retail use in K.C.C. 21A.08.070. These establishments shall include only SIC Major Group Nos. 50 and 51 and SIC Industry Group Nos. 422 and 423." K.C.C. 21A.06.1375. In this case, the storage does not involve bulk goods stored for assembly.

Mr. Walsh notes two uses that might be considered to be analogous to the proposed use. One is log storage yards, which are a permitted use in the RA zone. The other is self-storage, which is not a permitted use in the RA zone. Mr. Walsh suggests that although General Dynamics' is engaged in manufacturing ammunition, ordnance, and explosives – which are covered by SIC Major Codes 28 and 34 – it is not engaged in those activities on the RA zoned property.

Mr. Walsh recognizes that the use might fall under the category of a commercial/industrial accessory use. This is defined as "A use that is subordinate and incidental to a commercial or industrial use; including, but not limited to ... Incidental storage of raw materials and finished products sold or manufactured on-site ..." K.C.C. 21A.06.015. Mr. Walsh notes that no manufacturing or sales take place on site. However, the list of examples in K.C.C. 21A.06.015 are modified by the phrase "including, but not limited to." If these materials were stored on the same site on which they were being used for manufacturing, the storage would clearly be considered to be an accessory use to the manufacturing use. The fact that they are stored away from the site does not make this any less of an accessory use to the manufacturing activity. Under K.C.C. 21A.08.060, in the RA zone, storage as a commercial/industrial accessory use is limited to "accessory storage of commodities sold at retail on the premises or materials used in the fabrication of commodities sold on the premises." K.C.C. 21A.08.060B.22. If the activity described by Mr. Walsh falls within this category, then it would not be allowed, because there are no commodities sold on the premises.

Mr. Walsh argues that, because their activity is not described in one of the permitted use tables, it should be analyzed under K.C.C. 21A.02.070D, which gives the Director of DDES authority to determine whether a land use is allowed in a zone. The Director's decision is to be

based on whether or not permitting the proposed use in a particular zone is consistent with the purposes of this title and the zone's purpose as set forth in K.C.C. 21A.04, by considering the following factors:

1. The physical characteristics of the use and its supporting structures, including but not limited to scale, traffic and other impacts, and hours of operation;
2. Whether or not the use complements or is compatible with other uses permitted in the zone; and
3. The SIC classification, if any, assigned to the business or other entity that will carry on the primary activities of the proposed use.

K.C.C. 21A.02.070D.

Mr. Walsh argues that the proposed use is consistent with the rural area zone, that the physical characteristics of the use would have minimal impact on the surrounding area, and that the use would be compatible with other uses permitted in the rural area zone. The use as described by Mr. Walsh does appear to meet these two requirements. Interestingly, Mr. Walsh does not discuss the final element that the director must consider, the SIC classification assigned to the business entity that will carry out the activity. As noted above, General Dynamics activities would be assigned to either SIC 28 or 34, neither of which is a permitted use in the RA zone. However, this is only one factor to be considered and it does not necessarily mean that the use is not allowed merely because the entity falls within a disfavored SIC category.

Given these considerations, the conclusion is that the proposed use should be allowed as a conditional use. The conditional use permit provides the process by which the department can ensure that the use is compatible with the character of the surrounding area and to address the factors set forth in K.C.C. 21A.02.070D.

#### Conclusion

General Dynamics proposes to store ammunition and other explosives in three magazines on RA zoned property. The material is used in testing conducted at the company's facility in Bothell. No manufacturing or use of the materials would take place at the storage site.

There is no specific category that encompasses the described activity. Under K.C.C. 21A.02.070D, the director may determine whether a use should be allowed in a zone after considering certain factors. The recommendation is that the proposed use be allowed in the RA zone with a conditional use permit. The Conditional Use Permit will enable the department to ensure that the use will not have adverse impacts on the surrounding area, including adverse traffic impacts. Also due to the nature of the material stored on site, the conditional use permit will enable the department to make sure appropriate measures are implemented to protect the public health and safety.